



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Town of Milford

Petitioner

and

AFSCME Local 3657, Milford Police Employees

Respondent

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Case No. A-0480-21

Decision No. 2007-183

ORDER ON MOTION FOR REHEARING

The Town of Milford's Motion for Rehearing involves a Petition for Declaratory ruling the Town filed concerning a discrepancy between the description of the bargaining unit contained in the board's 1985 amended certification, which excludes sergeants, and the recognition clauses contained in the parties' collective bargaining agreements since 1988, which include sergeants. The Town's motion for rehearing arises from a hearing officer's determination that the status quo doctrine applies to the recognition clause, which in effect prevents the Town from relying on the board's 1985 amended certification. The hearing officer ruled as follows:

I therefore find under the circumstances that the status quo doctrine applies to the parties' recognition clause and that the Town is obligated to recognize sergeants under the CBA, despite the obvious conflict this creates, at present, with the Board's certification. It follows that the Town would be committing an unfair labor practice if it refused to so recognize the sergeants or otherwise unilaterally excluded sergeants from the parties' recognition clause.

The factual background and further details of the hearing officer's decision are contained in PELRB Decision No. 2006-046.

The board previously granted the Town's motion for rehearing "at a date and time to be set by the board." PELRB Decision No. 2006-111. Due to difficulties in identifying hearing dates when both parties were available, and on account of continuances in scheduled hearings

granted at the request of the parties, the hearing in this matter did not take place until October 11, 2007. The board has now completed its review of the record, including the parties' briefs filed on November 14, 2007.


Under RSA 273-A:8, I, "[t]he board or its designee shall determine the appropriate bargaining unit...when petitioned." "The composition of a bargaining unit is limited by law to those positions identified in the recognition clause at the time the original unit is certified by the PELRB and by any subsequent modifications approved by the PELRB." *Appeal of Londonderry School District*, 142 N.H. 677, 680 (1998)(citations omitted). *Appeal of Londonderry* involved a "grandfathered" unit in existence prior to the effective date of RSA 273-A.

The process for requesting the board's review and approval of a change to a previously certified bargaining unit involves the filing of a modification petition in accordance with Pub 302.05. AFSCME states in its brief that it "is mere oversight that the Board certification was never amended to reflect the same (the recognition clauses)." Whatever the reason, the Town and/or AFSCME have never filed a modification petition seeking a change to the 1985 amended certification, and accordingly the description of the Milford Police Employees bargaining unit contained in the recognition clause since 1988 has never been reviewed or approved by the board.

AFSCME's reliance upon the recognition clauses in place since 1988 and the *Appeal of City of Laconia*, 150 N.H. 91 (2003) is misplaced. *Appeal of Laconia* involved an effort by the public employer to exclude two positions already included in a certified bargaining unit, not a conflict between a board certification and a recognition clause. In accordance with RSA 273-A:8, I, the 1985 amended certification, and not the recognition clauses used since 1988, defines the bargaining unit. Under the circumstances of this case there is no need to address the provisions of the 2005-2009 CBA. However, as to any future contracts the Town is entitled to rely on the 1985 amended certification, and is not required to negotiate with AFSCME in order to exclude sergeants from the recognition clause, as that exclusion is required by the current certification unless the bargaining unit is changed in a PELRB modification proceeding.

It is so ordered.

Signed this 4th day of January , 2008 .


Bruce K. Johnson
Alternate Chair

By unanimous decision. Alternate Chair Bruce K. Johnson. Members Carol M. Granfield and Richard E. Molan present and voting.

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